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May 23, 2012

Via Certified Mail - Return Receipt Requested

Managing Agent
SSA Terminals, LLC
1131 SW Klickitat Way
Seattle WA 98134

RECEIVED

MAY 24 2012

Office Of The Executive

Via Certified Mail - Return Receipt Requested

Managing Agent
SSA Terminals, LLC
1050 SW Spokane St.
Seattle, WA 98134

Re: **SUPPLEMENTAL NOTICE OF INTENT TO SUE UNDER THE CLEAN
WATER ACT**

Dear Managing Agent:

We represent Puget Soundkeeper Alliance, 5305 Shilshole Ave. NW, Suite 150, Seattle, WA 98107, (206) 297-7002. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days notice of Puget Soundkeeper Alliance's intent to file a citizen suit against SSA Terminals, Inc. under section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below, or to amend its complaint filed in W.D. Wash. Case No. C11-1617JCC to include claims based on the violations alleged herein. This letter supplements the notice letter dated July 27, 2011 that Puget Soundkeeper Alliance sent to SSA.

SSA¹ has violated and continues to violate the CWA (see sections 301 and 402 of the CWA, 33 USC §§ 1311 and 1342) and its National Pollutant Discharge Elimination System Permit No. WAR000467 ("2010 Permit") with respect to operations of, and discharges of stormwater and pollutants from, its facility located at Terminal 18, 1050 SW Spokane St., Seattle, WA 98134 (the "facility" or "site") as described herein to waters of the state. The 2010 Permit (the Industrial Stormwater General Permit) was issued by the Washington Department of Ecology on October 21, 2009, with an effective date of January 1, 2010, and

¹ The Department of Ecology has used different names to identify the discharger/permittee, including Stevedoring Services of America, LLC, and Stevedoring Services Terminal 18. Puget Soundkeeper Alliance understands that the real party in interest is SSA Terminals, LLC. To the extent that Stevedoring Services of America, LLC, and Stevedoring Services Terminal 18 are entities distinct from SSA Terminals, LLC, this notice of intent to sue is provided to them as well. Puget Soundkeeper Alliance intends to sue the entity or entities responsible for operations at Terminal 18 and compliance with the NPDES permit for stormwater discharges from this facility.

modified on May 16, 2012. SSA also violated the conditions of its coverage under the previous Industrial Stormwater General Permit, Permit No. S03000467, issued by Ecology on August 21, 2002, effective on September 20, 2002, modified on December 1, 2004, effective January 14, 2005, expiring September 20, 2007, reissued August 15, 2007, effective September 15, 2007, reissued again on October 15, 2008, effective November 15, 2008, expiring April 30, 2009, but remaining effective through December 31, 2009 ("2005 Permit"). These violations of the 2005 Permit are ongoing as the 2010 Permit includes conditions substantially similar to those of the 2005 Permit that SSA violated.

I. Compliance with standards

Condition S10.A. of the 2010 Permit prohibits discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA and Washington's efforts to protect clean water. In particular, water quality standards represent the U.S. Environmental Protection Agency ("EPA") and Ecology's determination, based on scientific studies, of the thresholds at which pollution starts to cause significant adverse effects on fish or other beneficial uses. For each water body in Washington, Ecology designates the "beneficial uses" that must be protected through the adoption of water quality standards.

A discharger must comply with both narrative and numeric criteria water quality standards. WAC 173-201A-010; WAC 173-201A-510 ("No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter."). Narrative water quality standards provide legal mandates that supplement the numeric criteria. Furthermore, the narrative water quality standard applies with equal force even if Ecology has established a numeric water quality standard. Specifically, Condition S7 of the 2005 Permit and Condition S10.A of the 2010 Permit require that SSA's discharges not cause or contribute to an excursion of Washington State water quality standards.

SSA discharges to Elliot Bay and the Duwamish Waterway. The Duwamish Waterway does not meet water quality standards for PCBs, dissolved oxygen, fecal coliform, ammonia-N, and HPAHs and is included on the state's CWA Sec. 303(d) list of impaired waterbodies with regard to these standards. Elliot Bay does not meet water quality standards for fecal coliform, and is included on the state's CWA Sec. 303(d) with regard to this standard. SSA discharges stormwater that contains elevated levels of zinc, turbidity, and pH, as indicated in the table of benchmark excursions below. These discharges contribute to violations of water quality standards, in the Duwamish and Elliot Bay and have occurred each and every day since May 23, 2007, on which there was 0.1 inch or more of precipitation, and continue to occur. Precipitation data from King County International Airport is appended to this notice of intent to sue and identifies these days.

<u>Quarter in which sample collected</u>	<u>Zn Concentration (Benchmark 117 ug/L / Action Level 372 ug/L²)</u>	<u>Turbidity (Benchmark 25 NTU / Action Level 50 NTU)</u>	<u>pH (Benchmark 6-9 SU / Action Level Outside 5- 10 SU range)</u>	<u>Total Suspended Solids (30 mg/L)</u>
1 st Quarter 2005	262			
2 nd Quarter 2005	242			
3 rd Quarter 2005	328			
4 th Quarter 2005	381	39		30.5
1 st Quarter 2006	2960			
4 th Quarter 2006	191			
1 st Quarter 2007	200			
3 rd Quarter 2007	2150	29	5.95	
2 nd Quarter 2008	200			
3 rd Quarter 2008	470			
4 th Quarter 2008	350	30		35.6
1 st Quarter 2009	440	62		42
4 th Quarter 2009	190			

II. Stormwater Pollution Prevention Plan

A. Condition S3.B.1 of the 2010 Permit requires the SWPPP to include a site map that identifies significant features, the stormwater drainage and discharge structures, the stormwater drainage areas for each stormwater discharge point off-site, a unique identifying number for each discharge point, each sampling location with a unique identifying number, paved areas and buildings, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, surface water locations, areas of existing and potential soil erosion, vehicle maintenance areas, and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes. SSA is in violation of Condition S3.B.1 because its SWPPP lacks a site map with all of the requisite information, including significant features, a unique identifying number for each discharge point, each sampling location by unique identifying number, paved areas, all of the stormwater drainage and discharge structures, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, and all discharge points. SSA is also in violation of this condition because the facility includes additional outfalls, stormwater shut-off valves, scuppers, stormwater trench drains, and other features (such as the hide storage area) that are not included on SSA's site map included in the SWPPP.

B. Condition S3.B.2. of the 2010 Permit requires that SSA include a facility assessment in its SWPPP. Condition S3.B.2.a of the 2010 Permit requires a facility description that

² Benchmarks identified in this table are from Conditions S4.C. and S5. of the 2005 and 2010 permits, respectively, and action levels are from Condition S4.C. of the 2005 permit.

identifies the industrial activities and general layout of the facility and the flow of goods and materials through the facility. Condition S3.B.2.b. of the 2010 Permit requires an inventory of industrial activities that identifies all areas that have been or may be potentially sources of pollutants. Condition S3.B.2.c. requires an inventory of materials, including types of materials that could result in stormwater pollution, a short narrative for each material describing the potential of the pollutant to be present in stormwater discharges, and a narrative description of any potential sources of pollutants. Condition S9.B.1. of the 2005 Permit included substantially similar requirements. SSA is in violation of these conditions because the SWPPP does not provide all of the requisite information, such as an identification and description of activities and materials that have the potential to be sources of stormwater pollutants, which include truck traffic, trash from workers, leaking or broken containers, portable restrooms, birds, and paint on buildings and containers.

III. Monitoring

Condition S4.B.2. of the 2010 Permit requires SSA to sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a “substantially identical outfall” per S3.B.5.c. Condition S4.A of the 2005 Permit required SSA collect such a sample at each distinct point of discharge offsite if activities and site conditions at the facility that may pollute the stormwater are likely to result in discharges that will significantly vary in the concentration or type of pollutants. SSA’s SWPPP indicates that stormwater is discharged from 24 outfalls at SSA’s facility. However, SSA also discharges stormwater off-site from other distinct points of discharge at SSA’s facility, including from scuppers and additional outfalls. SSA has violated and continues to violate these conditions because it does not sample each of these distinct points of discharge off-site. These violations have occurred and continue to occur each and every quarter that SSA was and is required to sample its stormwater discharges under Conditions S4.A and B of the 2010 Permit, and Condition S4.A of the 2005 Permit, including the quarters in which it collected stormwater discharge samples from some, but not each, point of discharge, and other quarters in which there were discharges that should have been sampled to comply with permit terms but were not. These violations will continue until SSA commences monitoring all distinct points of discharge.

Condition S9.D. of the 2010 Permit provides that if SSA samples any pollutant at a designated sampling point more frequently than required by the permit, then SSA must provide the results of that sampling in the calculation and reporting of the data submitted in SSA’s DMRs to Ecology. SSA is in violation of this condition because it has failed to include all results from sampling, including samples taken more frequently than required by the permit, in DMRs submitted to Ecology.

Condition S4.G of the 2005 Permit required SSA to conduct quarterly monitoring of its stormwater discharges and to analyze samples for the parameters named on the 303(d) list as causing impairment of the listed waters. Condition S6.C of the 2010 Permit contains a substantially similar requirement. SSA discharges to Elliot Bay and the Duwamish Waterway, which are listed for fecal coliform and sediment quality parameters, including cadmium and mercury, so SSA is required to analyze its samples for fecal coliform and total suspended solids. SSA wrongly certified on November 26, 2004, that it is not a source of

fecal coliform because there is a potential source of fecal coliform from the industrial activities at SSA's facility, as evidenced by the fecal coliform monitoring data that was begun in 2010. SSA is in violation of these permit conditions for failing to analyze its stormwater samples for fecal coliform from all outfalls as required during all quarters under the 2005 and 2010 Permit. SSA is in violation of these permit conditions for failing to analyze its stormwater samples for total suspended solids during 2nd quarter 2007, 1st quarter 2008, 2nd—4th quarters 2009, 1st—4th quarters 2010, 1st—4th quarters 2011, and 1st quarter 2012.

IV. Inspections

Condition S7.C. of the 2010 Permit requires that each monthly inspection report include the name, title, and signature of the person conducting the monthly site inspection, along with the requisite statement, and the certification and signature of the person described in Condition G2.A. of the 2010 Permit, or a duly authorized representative of the facility, in accordance with Condition G.2.B. of the 2010 Permit. Condition S9.C. of the 2010 Permit requires these inspection reports to be retained onsite for a minimum of five years. SSA is in violation of these conditions by failing to prepare and/or retain onsite inspection reports that include the requisite signatures and certifications.

V. Corrective actions

Condition S8.A. of the 2010 Permit requires SSA to implement any applicable Level 1, 2, or 3 responses required by the 2005 Permit. SSA triggered twenty-one Level 1 responses under Condition S4.C of the 2005 Permit by exceeding the benchmarks for zinc, turbidity, pH, and total suspended solids. These exceedences are identified in the table in section I.A. of this notice of intent to sue. Under Condition S4.C. of the 2005 Permit, triggering a Level 1 response required SSA to inspect the facility and evaluate pollutant sources within two weeks after receipt of sampling results, identify source and operational control methods to reduce stormwater contamination, and evaluate whether improvements or changes to the SWPPP were warranted. Additionally, SSA was required to summarize the inspection results in the SWPPP, evaluate the need for a level two or three response, and include a brief summary in the DMR for the quarter for which sample results were above benchmark values. Condition S9.C. of the 2010 Permit and Condition S5.B. of the 2005 Permit require copies of all of these summaries, evaluations, and reports to be retained onsite for a minimum of five years. In violation of Conditions S8.A and S9.C. of the 2010 Permit and Conditions S4.C. and S5.B. of the 2005 Permit, SSA did not complete these Level 1 responses as required by failing to inspect its facility within two weeks, failing to summarize inspection results in the SWPPP, failing to evaluate the need for a level two or three response, failing to include a brief summary in the DMR, and failing to retain copies of all related documentation.

Pursuant to Condition S4.C. of the 2005 Permit, SSA triggered two Level 2 responses by exceeding the action level for zinc (372 ug/L) in two out of four consecutive quarters, as indicated in the table in section I.A. of this notice of intent to sue. Under the 2005 Permit, the Level 2 response required identification of potential pollutant sources, investigation of all available options for source control, operational control and stormwater treatment BMPs, implementation of additional source control and operational control BMPs, and preparation

and submission to Ecology of a Level 2 source control report within six months of initiating the Level 2 response. Condition S9.C. of the 2010 Permit and Condition S5.B. of the 2005 Permit require copies of the Level 2 source control reports to be retained onsite for a minimum of five years. In violation of Conditions S8.A and S9.C. of the 2010 Permit and Conditions S4.C. and S5.B. of the 2005 Permit, SSA failed to perform these Level 2 responses by failing to investigate all available control options, failing to implement additional BMPs, and/or by failing to submit the required reports.

VI. Signatory Requirements

Condition G2 of the 2010 Permit requires permit reports and other documentation to be signed by “a responsible corporate officer of at least the level of the vice president of a corporation.” Condition G17 of the 2005 Permit included the same requirement. SSA’s annual report, SWPPP, inspection reports, DMRs, permit application, renewal, and modification forms, corrective action reports, and other correspondence with Ecology are signed by Steve Hanes, Alan S. Jeroue, Dave Mantel, and other individuals who are not at least the level of the vice president of SSA. Therefore, SSA has violated these permit conditions for every report or documentation submitted since May 23, 2007 that was not signed by the appropriate corporate officer.

Conclusion

The above-described violations, and those described in the July 27, 2011, Notice of Intent to Sue letter issued to SSA on behalf of Puget Soundkeeper Alliance, are indicated by the information currently available to Puget Soundkeeper Alliance. These violations are ongoing. Puget Soundkeeper Alliance intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day for each violation. In addition to civil penalties, Puget Soundkeeper Alliance will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney’s fees.

Puget Soundkeeper Alliance believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against SSA Terminals, Inc. under Section 505(a) of the Clean Water Act for violations, or to amend the complaint in W.D. Wash. Case No. C11-1617JCC to include claims based on the violations alleged herein.

Very truly yours,

SMITH & LOWNEY, PLLC

By: 
Richard A. Smith

cc: Lisa Jackson, Administrator, U.S. EPA
Dennis McLerran, Region 10 Administrator, U.S. EPA
Ted Sturdevant, Director, Washington Department of Ecology
Kyle B. Lukins, Registered Agent, P.O. Box 24868, Seattle, WA 98134
Brad Jones, Gordon Thomas Honeywell
Ron Lavigne, Office of the Washington State Attorney General

